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DAVIS WRIGHT TREMAINE LLP

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

THE UNIVERSITY OF WASHINGTON, a
Washington state agency; THE CENTER FOR
HUMAN RIGHTS AT THE UNIVERSITY OF
WASHINGTON, a research center created by
state law; and ANGELINA GODOY, director of
the Center,

Plaintiffs,

v.

DEFENSE INTELLIGENCE AGENCY, and
UNITED STATES DEPARTMENT OF
DEFENSE,

Defendants.

Case No.

**COMPLAINT FOR DECLARATORY
RELIEF FOR VIOLATING FOIA**

Plaintiffs, the University of Washington, the Center for Human Rights at the University of Washington, and Angelina Godoy (collectively “the UWCHR”), allege as follows:

INTRODUCTION

1. Since 2011, UWCHR researchers have worked with the families of those who died or disappeared during El Salvador’s armed conflict (1980-1992), as well as with survivors of state-sponsored massacres and torture stemming from this conflict. The Salvadoran government has failed to hold anyone accountable for the numerous crimes against humanity known to have been committed during the war and has refused to open its archives or declassify information that could aid families seeking to heal from these abuses. Human rights workers have turned to the U.S. government as a next-best alternative source, since as a result of the U.S. support and training of the Salvadoran military during this period, many relevant documents remain in U.S. government possession.

2. Since January 2020, the UWCHR has made separate requests to the Defense Intelligence Agency (“DIA”) for records of El Salvador’s armed conflict, including 1) January 11, 2020, Freedom of Information Act (“FOIA”) Request No. FOIA 00037-2022; and 2) January 15, 2020, FOIA Request, resent on May 6, 2021, and which the DIA never acknowledged. UWCHR also made two Mandatory Declassification Review (“MDR”) requests to DIA on October 1, 2020, but DIA also did not acknowledge these.

3. On May 8, 2023, the UWCHR withdrew the two FOIA requests and the two MDR requests and submitted one request (FOIA-00173-2023) for a search for the following specific records of El Salvador’s armed conflict: “copies of all documents contained in the ‘Central America Joint Intelligence Team (CAJIT) Records 1983-1992,’ described on this SF-135 ‘Records Transmittal and Receipt’ form as having accession number 373-94-0051 and consisting of 50 boxes of hardcopy documents” (the “CAJIT Records”). Attached as **Exhibit A** is a true and correct copy of the May 8, 2023, FOIA Request from the UWCHR and Ms. Godoy (the “2023 FOIA Request”). Attached as **Exhibit B** is a true and correct copy of SF-135 “Records Transmittal and Receipt” form. DIA received the FOIA Request on May 23, 2023, and assigned it case number FOIA-00173-2023. Attached as **Exhibit C** is a true and correct copy of

1 DIA's letter acknowledging receipt of the 2023 FOIA Request. To date, the DIA has produced
2 no records in response to the 2023 FOIA Request.

3 4. The UWCHR brings this action under the FOIA, 5 U.S.C. § 552 *et seq.*, as
4 amended to enjoin the DIA, a Department of Defense combat support agency, from continuing to
5 improperly withhold agency records regarding reports of Salvadoran Army interrogations and
6 atrocities, as well as other human rights violations, committed during the Salvadoran armed
7 conflict.

8 5. The Freedom of Information Act "focuses on the citizens' right to be informed
9 about 'what their government is up to,'" by requiring the release of "[o]fficial information that
10 sheds light on an agency's performance of its statutory duties." *DOJ v. Reporters Comm. for*
11 *Freedom of the Press*, 489 U.S. 749, 750, 773 (1989) (citation omitted). "[D]isclosure, not
12 secrecy, is the dominant objective" of FOIA. *Dept't of Interior v. Klamath Water Users*
13 *Protective Ass'n*, 532 U.S. 1, 8 (2001) (internal quotation marks and citations omitted).

14 6. The UWCHR, through this lawsuit, seeks the public disclosure of the CAJIT
15 Records, consisting of 50 boxes of hard copy documents currently located in the Washington
16 National Records Center in the Suitland Federal Complex in Suitland, Maryland, containing
17 Central America Joint Intelligence Team Records from 1983-1992.

18 7. This information is essential to UWCHR's ongoing efforts to make information
19 publicly available about El Salvador's civil war, including information that can be provided to
20 the survivors of torture and the families of the disappeared, which can help them heal decades-
21 old wounds from war-related trauma.

22 8. This Request is of the utmost urgency since the records at issue are noted to have
23 a disposal date of 2023. *See* Exhibit B.

24 JURISDICTION

25 9. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B)
26 and 28 U.S.C. § 1331.

VENUE

10. Venue in the Western District of Washington is proper under 5 U.S.C. § 552(a)(4)(B). Independently, venue is proper in the Western District of Washington because all Plaintiffs reside in Seattle, Washington.

PARTIES

11. Plaintiff, the University of Washington, is a Washington state agency and the state's largest public research university. Its primary business offices are in Seattle, Washington.

12. Plaintiff, the Center for Human Rights at University of Washington, is an organization within the University of Washington. The Washington Legislature created the Center for Human Rights in 2009 to expand opportunities for Washington residents to receive a world-class education in human rights, generate research data and expert knowledge to enhance public and private policymaking, and to be an academic center for human rights teaching and research. The Center for Human Rights focuses on, among other things, the rights of all persons to security against violence. Its offices are in Seattle, Washington.

13. Plaintiff Angelina Godoy is the Director of the Center for Human Rights. Ms. Godoy resides in Seattle, Washington.

14. Defendant Defense Intelligence Agency is a federal agency within the meaning of 5 U.S.C. § 552(4) and 5 U.S.C. § 552a(a)(1).

15. Defendant Department of Defense is a federal agency within the meaning of 5 U.S.C. § 552(4) and 5 U.S.C. § 552a(a)(1).

FACTS

UWCHR'S FOIA REQUESTS TO THE DIA

16. In December 2017, UWCHR filed suit against the U.S. Department of Defense (DOD) under the Freedom of Information Act, seeking the declassification of U.S. documents pertaining to three military operations in which crimes against humanity were committed during the Salvadoran armed conflict. (D. Wash. Case No. 2:17-cv-01854). In the context of that litigation, DOD filed a status report which included information that permitted UWCHR researchers to locate a previously unknown SF-115 form, in which the government requested to

transfer 90 cubic feet of records from the DIA to the National Archives and Records Administration. The form describes the CAJIT Records as “Central America Joint Intelligence Team (CAJIT) Records Pertaining to the Communist Insurgency in El Salvador, early 1980s-1990,” and explains that they contain “reports of Salvadoran Army interrogations” and “reports of atrocities,” as well as other records potentially of great value to those investigating human rights violations committed during the armed conflict. Attached as **Exhibit D** is a true and correct copy of the SF-115 form.

17. Among the records DIA produced as a result of the litigation against the DOD was an SF-135 “Records Transmittal and Receipt” form, which contains the only known inventory of the CAJIT Records and which indicates that the collection’s “disposal date” is 2023. *See Exhibit B.*

18. On January 10, 2020, UWCHR made two MDR requests for specific documents contained in the CAJIT Records (“MDR Requests”). While these requests did lead to communications between DIA and UWCHR, DIA never acknowledged these requests or produced any documents in response. Attached as **Exhibit E** and **Exhibit F** are true and correct copies of the MDR Requests.

19. On January 11, 2020, the UWCHR submitted a FOIA Request seeking select documents from the CAJIT Records. Attached as **Exhibit G** is a true and correct copy of the January 11, 2020, FOIA Request. In response to a follow-up inquiry, the DIA responded on February 13, 2020, that it was unable to find the FOIA Request of January 11, 2020. Attached as **Exhibit H** is a true and correct copy of the DIA’s February 13, 2020, response. The UWCHR inquired again on February 26, 2020, and on March 4, 2020, about this Request, but received no response from DIA. On March 8, 2020, the UWCHR resubmitted this Request via hard copy mail, but received no response. On May 6, 2021, the UWCHR again inquired by email about this Request, but received no response. On November 5, 2021, the UWCHR inquired for a sixth time about this Request, finally receiving an acknowledgment assigning the Request case number FOIA 00037-2022. Attached as **Exhibit I** is a true and correct copy of the DIA’s

1 acknowledgment letter of November 8, 2021. The DIA requested to speak to Ms. Godoy, for
2 which she provided her cell phone number, but no further communications were received.

3 20. The UWCHR filed a second FOIA request on January 16, 2020, seeking a
4 different set of select documents from the CAJIT Records. Attached as **Exhibit J** is a true and
5 correct copy of the January 16, 2020, FOIA Request. On May 6, 2021, the UWCHR resent the
6 same Request. No acknowledgment was ever received of either of these communications.

7 21. Having received no action on the four requests to DIA, on May 8, 2023, the
8 UWCHR filed the 2023 FOIA Request and withdrew the previous ones. *See* Exhibit A. The
9 2023 FOIA Request seeks copies of the CAJIT Records identified in the SF-135 “Records
10 Transmittal and Receipt” form. The documents are described as 50 boxes of records of the
11 Central America Joint Intelligence Team (CAJIT) 1983-1992, and are currently located in the
12 Washington National Records Center (WNRC) in the Suitland Federal Complex in Suitland,
13 Maryland, under legal custody of DIA. *See* Exhibit A.

14 22. On May 23, 2023, DIA acknowledged receipt of the 2023 FOIA Request and
15 assigned it case number FOIA-00173-2023. *See* Exhibit C. In its response, DIA indicated that it
16 was “unable to respond” within the 20-day statutory period due to “unusual circumstances” and
17 that it could not “provide an estimated date of completion.” *See* Exhibit C. To date, the DIA has
18 produced no records in response to the 2023 FOIA Request.

19 23. The UWCHR seeks these documents to help families heal from decades-old
20 wounds from war-related trauma. Survivors of massacres have been stigmatized for insisting on
21 the truth of what they saw; UWCHR research has uncovered documents that corroborate the
22 truth they have always maintained. UWCHR researchers have located and shared documents
23 that help survivors of torture process their trauma, producing what one survivor of torture called
24 “a form of reparations” through U.S. government documents. In the case of disappearances, the
25 value of the documents is even more impactful, as the unconfirmed death of a loved one
26 profoundly alters the ability of survivors to engage in normal grief and healing processes. The
27 documents in the CAJIT Records involve a large number of heretofore unseen documents that
28 appear extremely likely to contain information of high interest to researchers and survivors.

24. The CAJIT Records' SF-135 form notes a disposal date as of 2023, and the UWCHR does not want the records to be lost or destroyed before their potential contribution to healing and research can be examined.

25. On June 5, 2023, Angelina Godoy had a conversation with Anthony Kenon from the Information Management and Compliance Office of DIA about the 2023 FOIA Request. During this conversation, Mr. Kenon told Ms. Godoy that the scope of the 2023 FOIA Request was so burdensome that fulfilling it had the potential to "bring the entire office to a standstill" and that "there [was] no way in the world the DIA can have its entire office come to a halt," disregarding its daily duties in order to satisfy the 2023 FOIA Request. Mr. Kenon asked Ms. Godoy if the UWCHR would consider reducing the scope of the 2023 FOIA Request to fewer documents from fewer boxes, and to receive the materials in installments. Ms. Godoy responded that she understood the 2023 Request was unusual but that the UWCHR was interested in the contents of the entire collection. She also said the UWCHR was amenable to receiving the CAJIT Records in installments. Mr. Kenon also indicated that the process could wind up taking a very long time, suggesting Ms. Godoy's child would be in college before it was complete.

26. During the June 5, 2023, conversation between Ms. Godoy and Mr. Kenon, Ms. Godoy expressed that she was particularly concerned because the disposal date of the CAJIT Records was listed as 2023 and she did not want the materials to be destroyed before they could be reviewed for declassification. Mr. Kenon responded that he would ask the Records Management Team about this and get back to Ms. Godoy. He also said that the Records Management Team may have said that three boxes from the CAJIT Records had already been transferred out of the storage facility to Mr. Kenon's office and proposed that he would go through the first of those three boxes to see how long it would take to review them.

27. On June 8, 2023, Mr. Kenon and Ms. Godoy had another conversation where Mr. Kenon indicated that he had queried the relevant officials in the DIA by email and they had indicated to him that the CAJIT Records were *not* going to be destroyed but that, instead, they were eligible for permanent custodial accessioning in 2023.

28. During the June 8, 2023, conversation, Mr. Kenon also indicated to Ms. Godoy that Boxes 50, 49, and 48 of the CAJIT Records were currently located in DIA's headquarters in Washington, D.C., and that he would be at that office on Wednesday, June 14, 2023, to look at Box 50 to "assess the complexities" before making a plan on how to proceed. According to Mr. Kenon, Box 50's contents are described as "FMLN Guerrilla Manuals and Interrogation Reports." Lastly, Mr. Kenon told Ms. Godoy that he discussed this case with the DIA "management team" and that they said that they would be fulfilling the 2023 FOIA Request over time and would be in touch with the requestor about its progress.

29. On June 21, 2023, Ms. Godoy and Mr. Kenon had a conversation in which Mr. Kenon indicated he had reviewed the contents of Box 50 of the CAJIT Records and described that this box contains many folders labeled "Captured Documents" and which contain original documents in Spanish along with their English translation. In Mr. Kenon's judgment, processing these contents will be time-consuming, but not excessively difficult. He also indicated DIA identified a person at DIA who does FOIA reviews for the Latin American Region who will have the task to review the CAJIT Records. Mr. Kenon will reach out to this person after July 4, 2023, "to make sure he is on board" with the review.

30. Despite Mr. Kenon's assurances, UWCHR is concerned that the CAJIT Records will be destroyed given the disposal date listed in the SF-135 form.

31. UWCHR recognizes DIA's cooperation given the conversations between Ms. Godoy and Mr. Kenon and given that Mr. Kenon has reviewed one of the 50 boxes of the CAJIT Records. But even though UWCHR is willing to work cooperatively with DIA on a production schedule, UWCHR anticipates that without any court intervention DIA will continue to resist a timely production of these records, and that it will take years—or decades—for UWCHR to obtain the CAJIT Records.

32. UWCHR is appreciative of the support that Mr. Kenon has provided — but it is obvious that the DIA will not timely act consistent with FOIA without action by this Court.

33. The DIA is wrongfully withholding records sought by the UWCHR. There is a substantial public interest in the disclosure of the documents requested. The DIA's refusal to

timely release these documents that are believed to be within its custody and control constitutes an abuse of the DIA's discretion and a violation of FOIA.

FIRST CAUSE OF ACTION

Violation of FOIA by the DIA for Failure to Make Promptly Available the Records Sought by the UWCHR's Request.

34. The UWCHR repeats and realleges the allegations contained in paragraphs 1 through 18 above, inclusive.

35. The UWCHR has a legal right under FOIA to obtain the agency records it requested on May 8, 2023, and there exists no legal basis for the DIA's failure to make these records available to the public.

36. The DIA's failure to make promptly available the records sought by the UWCHR's Request violates FOIA, 5 U.S.C. § 552(a)(3)(A) and (a)(6)(A)(ii), and applicable regulations promulgated thereunder.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request the Court award them the following relief:

- A. Declare that the DIA has violated FOIA in its responses to the UWCHR's FOIA Request;
- B. Order an injunction prohibiting the DIA from destroying the records sought by the 2023 FOIA Request;
- C. Issue a court-ordered schedule for the production of the CAJIT Records;
- D. Order the DIA to immediately disclose the requested records to Plaintiffs in installments in compliance with the court-ordered schedule;
- E. Order a waiver of all fees for the 2023 FOIA Request since UWCHR is an educational institution and the records sought are in furtherance of scholarly research and in the public interest.

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- 1 F. Award Plaintiffs their reasonable costs and attorneys' fees;
2 G. Grant such further relief as the Court may deem just and proper.
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4 DATED: July 24, 2023

Respectfully submitted,

5 Davis Wright Tremaine LLP
6 Special Assistant Attorneys General

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24 **pro hac vice application forthcoming*
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